

COMPETITION ALERT

29 May 2013

PROPOSED INDUSTRY CODE OF CONDUCT FOR CONSUMER GOODS AND SERVICES INDUSTRY

On 9 May 2013, the Acting Commissioner of the National Consumer Commission (NCC) published a proposed industry code of conduct and ombudsman scheme for public comment by 31 May 2013 in terms of the Consumer Protection Act, No 68 of 2008 (CPA).

All interested parties are invited to comment on the proposed industry code of conduct and ombudsman scheme and the NCC will, furthermore, consult with relevant persons conducting business in the consumer goods and services industry as well as with relevant accredited consumer protection groups.

Once the NCC has considered all submissions and consulted with the relevant persons, it may recommend the proposed industry code of conduct and ombudsman scheme to the Minister of the Trade and Industry, Dr Rob Davies, to be officially prescribed as a binding industry code of conduct and ombudsman scheme.

All suppliers that are active within the consumer goods and services industry (which find very wide application) will, once the code of conduct is approved and prescribed by the Minister, be obliged to comply with the codes of conduct and ombudsman scheme.

The ombudsman scheme specifically provides for alternative dispute resolution for purposes of any complaints relating to alleged transgressions of the CPA and/or the provisions of the code of conduct within the consumer goods and services industry in line with the existing dispute resolution procedures set in place, on a voluntary basis, by the Consumer Goods Council of South Africa (GSA).

The codes of conduct further provide for industry standards in line with the existing industry standards set in place by the CGSA for voluntary compliance by suppliers within the consumer

goods and services industry. These standards are extensive and set out additional compliance imperatives for compliance by the consumer goods and services industry relating to, inter alia, labelling of products, display of price, liability for damages caused by goods, sales records and grey market goods as well as very specific provisions relating to the marketing and sale of aerosol products.

DRAFT LOTTERIES AMENDMENT BILL 2013

On 8 May 2013, the Minister of Trade and Industries, Dr Rob Davies, published the Draft Lotteries Amendment Bill for public comment by 25 June 2013.

The Draft Lotteries Amendment Bill primarily aims at ensuring the more effective functioning of the National Lotteries Board and the application and distribution and adjudication of grants (through the establishment of a specified distributing agency) under the Lotteries Act, No 54 of 1997.

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In particular the Draft Lotteries Amendment Bill aims to delineate which persons are entitled to act as members of the National Lotteries Board by, for example, listing those persons that are disqualified to act as members of the National Lotteries Board and allowing the Minister to terminate the membership of a member of the National Lotteries Board should such a member fail to attend two meetings of the National Lotteries Board consecutively, without prior notification and approval of such absence. The functions of the National Lotteries Board are also greatly expanded upon by broadening the National Lotteries Boards' functions in respect of the application, research, consideration, granting and appeal of grants.

Interestingly (particularly in the context of the current licence holder's 5 year licence expiring in 2014), the Draft Lotteries Amendment Bill allows for the Minister to appoint and authorise an Organ of State to conduct the National Lottery for a period of not exceeding eight years provided that there are justifiable grounds not to issue a licence as conventionally allowed for.

DRAFT TERMS OF REFERENCE FOR MARKET INQUIRY: PRIVATE HEALTHCARE SECTOR

The Competition Commission (Commission) has published draft terms of reference for its market inquiry into the private healthcare sector (draft terms of reference) for public comment by the extended date of 25 June 2013.

It was announced on 8 March 2013 that section 6 of the Competition Amendment Act, No 1 of 2009 (Competition Amendment Act) will come into force on 1 April 2013. The Commission made no secret of its intention to institute a market inquiry into the private healthcare sector but with the market inquiry provisions of the Competition Amendment Act coming into force the Commission now has the scope to conduct a market inquiry with more vigour as it is empowered with much wider and more focused investigatory powers to enable it to extract the information it deems necessary to conduct its inquiry without requiring the Commission to have reasonable grounds to believe that a particular form or forms of anticompetitive conduct is taking place.

It is in this context that the Commission has published the draft terms of reference. As stated by the Commission in the introduction of the draft terms of reference "these terms of reference set out the scope of market inquiry, it identifies the factors that give the Commission reason to believe that there are features of the private healthcare market that may prevent, distort or restrict competition, and sets out the expected timelines for the inquiry."

The Commission will focus in its market inquiry identified segments within the private healthcare market, being healthcare providers, hospitals, medical aid schemes, medical aid administrators and medical aid brokers (surprisingly pharmaceutical companies are not expressly identified as a focus of the market inquiry). The key focus of the market inquiry, although not the only aspect which the inquiry is concerned with, will relate to the price setting mechanisms in the private healthcare sector. Although the Commission does not directly state the primary focus of its investigation it is clear that the Commission aims to make policy and regulatory recommendations that would, in its view, improve competition in the private healthcare market and not as much emphasis has been placed on the Commission prosecuting any competitive conduct that it might uncover in the process of the market enquiry.

The Commission envisages the market inquiry to take place through public consultation, information requests and consultations with companies, associations and stakeholders with a panel of experts overseeing the functions of the market inquiry and the preparation of the final report.

The Commission envisages the launch of the market inquiry to take place in the second quarter of 2013, by September 2013 and that the Commission will issue its draft recommendation in December 2014, with final recommendations to be issued by no later than 30 June 2015.

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